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Subject:— Papers relating to

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Mr.Jogi served the Educational Department for 14 years at the end of which he was continuously absent for two years. Consequently he was discharged on 1st April 1917. He was however reemployed on 24.12.1919 and continued till 31st October 1924 on which date he was discharged from service in order to make room for a trained teacher,. He was reappointed on the next day i.e. on 1st November 1944 on an officiating basis in a leave vacancy and was confirmed on 6th June 1925 whereafter his services were transferred to the Local Board East Khandesh. He joined the Board's provident fund on 1st April 1929 when it was instituted and subsequently retired on 28th July 1939. The questions raised for the consideration of the R.L.A. are:

(1) Whether Mr.Jogi can be considered to be a guaranteed teacher within the meaning of rule 47(2) of the Primary Education Rules,1924; if not,

(2) Whether he is entitled to pension.

2. The concluding portion of rule 47(2) of the Bombay Primary Education Rules,1924, provides that for the purposes of this rule "guaranteed teacher" means a teacher who was holding a permanent appointment under Government on 30th June 1923 and who was taken over and employed by a Local Authority under sub-section (1) of section 8 of the Act. To claim the privilege of a guaranteed teacher within the meaning of rule 47(2) what is necessary is that the teacher (1) must have held a permanent appointment under Government on 30th June 1923, and (2) must have been taken over and employed by a local authority under sub-section (1) of section 8 of the Bombay Primary Education Act. In the present case it is admitted that Mr.Jogi was taken over and employed by the Local Board, East Khandesh under sub-section (1) of section 8 of the Act. The only question relevant for the purpose will therefore be whether

Mr.Jogi was holding a permanent appointment under Government on 30th June 1923.

3. In para 2 of his endorsement at page 8 ante the D.P.I.reports.

"Mr.Jogi's is a peculiar case. It is reported that he was in permanent service from 24th December 1919, to 31st October,1924, that he was relieved in the afternoon of 31st October,1924, to make room for a trained primary teacher and re-employed in the forenoon of 1st November,1924, in a leave vacancy, that he continued in this leave vacancy till 6-6-1925 on which date he was confirmed ".

In para. 4 of his endorsement the D.P.I. explains the nature of permanent service of Mr.Jogi from 24-12-1919 to 31-10-1924 as follows:

"Although he i.e. Mr.Jogi was reported to have been in permanent service between 24.12.1919 and 31.10.1924 he did not continue on that basis through his subsequent service, but was relieved on 31-10-1924, and appointed again the next day on an officiating basis. It seems that his service between 24-12-1919 and 31-10 11924 was not really permanent but only officiating,according to the practice in vogue at th time, which was for untrained teachers like Mr.Jogi to be regarded as permanent subject to the distinct understanding that they would be discharged on the appointment of trained teachers when available."

In his letter at page 19 ante the DyP.I. observes:

"As already stated in this office reply to Government U.O.R. dated 10th November,1924, ~~[illegible]~~ Mr. Jogi was in permanent service from 24th December,1919, to 31st Octobe 1924,. He was, however, relieved in the afternoon of 31st October 1924, to make room for a trained primary teacher an was reemployed in the forenoon of 1st November,1924, in a leave vacancy and was untimately confirmed on 6th June 1925. He joined the Board's Provident Fund on 1st April 1929. It would thus appear that the question of the payment of pensi contribution on his behalf arises in respect of the periods noted below viz.-

(i) From 24th December 1919 to 31st October 1924.
(ii) From 1st November 1924 to 5th June 1925.
(iii) From 6th June 1925 to 31st March 1929.

Regarding (i), Mr.Jogi was reported to have been in permanent service during this period. It follows, therefo that pension contribution on his behalf must have been paid in respect of this period.

As regards (ii) Mr.Jogi was working in leave vacancie in the capacity of a temporary teacher during this period. There were, however, a number of clearly vacant posts on which Mr.Jogi's lien could have been shown during the period from 1st November 1924 to 5th June 1925. Pension contribution used then to be paid on the sanctioned number of posts in lump and not on behalf of particular individua As pension contribution for all sanctioned posts has been paid for this period it may be assumed to have been paid on Mr.Jogi's behalf also if his lien is now considered to have been shown on one of the vacant posts for this period

In regard to (iii) Mr.Jogi was confirmed on 6th June 1925, and the joined the Board's Provident Fund on 1st Apr 1929.....

1929. Obviously, pension contribution has been paid on his behalf in respect of the period from 6th June,1925 to 31st March 1929.

It appears very difficult to reconcile the statements contained in the endorsement and the letter of the D.P.I. with regard to the nature of Mr.Jogi's service from 24th December 1919 to 31st October 1924. When Mr.Jogi was appointed in a permanent vacancy and his pension contribution was paid there is no reason why his service during that period should be treated as temporary. At any rate Mr.Jogi's case appears to be peculiar and whether or not he was in permanent service on 30th June 1923 he is entitled to pension under new rule 5(2), even assuming that rule 47(2) of the Primary Education Rules is not applicable. In the circumstances it is advisable to treat him as in permanent service on 30th June 1923 and therefore a guaranteed teacher under rule 47(2).

Sd/ P.N.M.

Remembrancer of Legal Affairs.

U.R. to E.D.No.4649,dated the 21st June 1945.

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Office of the R.L.A.

It appears that one Sakharam Tukaram the occupant of S.No.72 of village Harmantgaon on the Irrigation Pravara Right Bank Canal granted a lease of his land to Hari Fondaji in April 1943 for a period of 10 years on an express condition that the lessee should irrigate his crops from the well water only. The lessee planted 9 acres of sugar cane on the well water but however frequently used canal water unauthorisedly. The Panchnam as were made by the Irrigation Department in respect of the unauthorised use of canal water and the maximum penal rates were levied under rule 23 of the Bombay ~~Canal~~Canal Rules, 1934. Along with the lessee notices were issued by the Department in thr form at p.11 ante to the lessor Sakharam on the ground of his liability as superior holder. Sakharam has given notice of a suit under section 80-Civil Procedure Code disputing his liability to pay charges for canal water stolen by his tenant. P.W.D. proposes to reply to the notice as follo

> "A notice (in the form at p.11 ante) is issued as required by rules to the owner of the land Mr.Sakharam Tukaram each time a panchnama is held informing him of his liability as a superior holder. Penal rates are recoverable as water rates under section 47 of the Bombay Irrigation Act, 1879 and water rates are recoverable as ~~the~~ arrear~~s~~ of land revenue under section~~s~~ 136 of the Land Revenue Code, vide section 57 of the Bombay Irrigation Act,1879. Consequently the position is legally in order."

The R.L.A. is requested to advise whether the reply wou be suitable.

Section 45 of the Bombay Irrigation Act,1879 implie that the person who has unauthorisedly used canal water is liable for the payment of the water rate. Section 47 provides that all charges for the unauthorised use or

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waste of water may be recovered as water-rates in addition to penalties incurred on account of such use or waste. Under section 57 water rate, which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. Section 187 in Ch.XI of the Land Revenue Code, 1879 provides that all sums declared by this or any other Act or Regulation for the time being in force to be leviable as an assessment or as a revenue demand or as an arrear of land revenue shall be levied under the forgoing provisions of this Chapter and all the foregoing provisions of this Chapter shall, so far as may be, be applicable thereto. It is therefore apparent from these provisions that for the receovery of water rates only the machinery provided in ch.XI of the Land Revenue Code can be used.

Section 150 of the Land Revenue Code provides that an arrear of land revenue may be recovered by the following processes:-

(a) by serving a written notice of demand under section 152;

(b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;

(c) by distraint and Sale of the defaulter's moveable property under section 154;

(d) by sale of defaulter's immoveable property under section 155.

(e)by arrest and impriconment of the defaulter under section 157 and 158;

(f).....

Under section 152 if the amount when not paid after a notice of demand shall be recoverable from the defaulter as an

arrear.....

arrear of revenue. Consequently a notice of demand of water rate will have to be first served on the tenant Hari Kondaji, and in case he fails to pay after service of such notice, steps can be taken to recover the water rate by any or all of the processes (a) to (e) enumerated in section 150. The landlord Sakharam not being a defaulter within the meaning of section 152, the processes (a),(c),(d), and (e) under section 150 will not be available against him; but his land S.No.72 which has benefited by the unauthorized use of water and in respect of which the water rate is due (X) It would no doubt be hard on Sakharam if his land is forfeited for the recovery of the water rate which his tenant is primarily liable to pay, but he has himself to thank for selecting such an undesirable tenant. It is open to him to pay the water rate to save the forfeiture of his land and proceed to reimburse himself from his tenant.

(X) would be liable to forfeiture under (b) of section 150 on default of the payment of the water rate.

Sakharam is not personally liable, nor would his other property be liable for the satisfaction of the water rate. It is open to the Collector to recover the water rate under section 150 either by forfeiting the land or by resorting to other remedies against the tenant Hari Kondaji. The reply proposed by the P.W.D. to Mr.Sakharam implies his liability as a superior holder under section 136, which is inapplicable in cases where Government dues are recoverable as an arrear of land revenue and consequently it is not suitable. The P.W.D. should inform Mr.Sakharam that his land S.No.72 would be liable to forfeiture under section 153 read with section

150(b).....

150(b) of the Land Revenue Code in case the water rate is not paid by his tenant when demanded and that it is open to him to pay it to save forfeiture.

Sd/ P.N.M.

Re-embrancer of Legal Affairs.

U.R. to P.W.D. No.5562, dated the 27th July 1945,

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